

1 DAVID J. GROESBECK
2 DAVID J. GROESBECK, P.S.
3 313 West Riverside Avenue
4 Spokane, Washington 99201-0209
5 Telephone: (509) 747-2800
6 Facsimile: (509) 747-2828
7 Email: david@groesbecklaw.com

8 Attorney for Pacific Coast Fiber Fuels, LLC and
9 Joseph A. Mayo, IV

10
11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON
13

14 CHRISTIAN COX, a married man;
15 JOSEPH A. MAYO IV, a married man;
16 and PACIFIC COAST FIBER FUELS,
17 LLC, a Washington limited liability
18 company,

19 Plaintiff,

20 v.

21
22 ALLIANT INSURANCE SERVICES,
23 INC., *dba* MOLONEY + O'NEILL, a
24 Delaware corporation, et al.,

25 Defendants.
26

Case No.: 16-CV-00362-SAB

JOSEPH A. MAYO, IV'S AND
PACIFIC COAST FIBER FUELS,
LLC'S RESPONSE TO
DEFENDANTS' OPPOSITION TO
JOSEPH A. MAYO IV AND
PACIFIC COAST FIBER FUELS,
LLC'S F.R.C.P. 41 MOTION FOR
VOLUNTARY DISMISSAL

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29 JOSEPH A. MAYO, IV'S AND
30 PACIFIC COAST FIBER
31 FUELS, LLC'S RESPONSE TO
32 DEFENDANTS' OPPOSITION
TO ... F.R.C.P. 41 MOTION FOR
VOLUNTARY DISMISSAL - 1



David J. Groesbeck, P.S.
Attorney and Counselor
313 West Riverside Avenue
Spokane, Washington 99201-0209
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I. INTRODUCTION

Without filing a motion, Defendants oppose Mr. Mayo's and Pacific Coast Fiber Fuels, LLC's voluntary dismissal. Defendants' opposition should be denied as moot because Mr. Mayo and Pacific Coast Fiber Fuels filed a "F.R.C.P. 41 Motion for Voluntary Dismissal of Actions by Pacific Coast Fiber Fuels, LLC and Joseph A. Mayo IV", (ECF No. 88) which voluntarily dismissed their actions against the Defendants effective March 16, 2017.

II. ARGUMENT

Joseph A. Mayo, IV and Pacific Coast Fiber Fuels, LLC Properly Filed a Voluntary Dismissal of All of their Claims Against All of the Defendants and therefore Defendants' Opposition thereto should be denied as moot.

On March 16, 2017, Mr. Mayo and Pacific Coast Fiber Fuels, LLC filed a "F.R.C.P. 41 Motion for Voluntary Dismissal of Actions by Pacific Coast Fiber Fuels, LLC and Joseph A. Mayo IV", (ECF No. 88) which voluntarily dismissed all of their actions against all of the Defendants. Fed. R. Civ. P. 41(a) states:

JOSEPH A. MAYO, IV'S AND
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1 (a) Voluntary Dismissal.

2 (1) By the Plaintiff.

3
4 (A) *Without a Court Order*. Subject to Rules 23(e), 23.1(c),
5 23.2, and 66 and any applicable federal statute, the plaintiff may
6 dismiss an action **without a court order** by filing:

7 (i) a notice of dismissal before the opposing party serves
8 either an answer or a motion for summary judgment; or

9
10 (ii) a stipulation of dismissal signed by all parties who
11 have appeared.

12 ...

13 (B) *Effect*. Unless the notice or stipulation states otherwise,
14 **the dismissal is without prejudice**. But if the plaintiff, previously,
15 dismissed any federal-or state-court action based on or including the
16 same claim, a notice of dismissal operates as an adjudication on the
17 merits.

18 Emphasis added.

19
20 LR 41.1 further states:

21
22 **(a) By Plaintiff—Voluntary**. In case of dismissal by filing notice
23 pursuant to Fed.R.Civ.P.41(a)(1), such notice shall contain a
24 statement that no answer, counterclaim, or motion for summary
25 judgment has been served, and shall be signed by the plaintiff or
26 plaintiff's attorney.

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1 The court record reveals, and it is undisputed by Defendants, that
2 Defendants never filed an answer, counterclaim, or motion for summary judgment
3 prior to Mr. Mayo's and Pacific Coast Fiber Fuels, LLC's filing their Fed. R. Civ.
4 P. 41(a)(1)(A)(i) dismissal.
5

6
7 While Joseph A. Mayo, IV and Pacific Coast Fiber Fuels, LLC should
8 have styled their pleading as a "Notice" rather than a "Motion", the pleading
9 comports with Fed. R. Civ. P. 41(a)(1)(A)(i), and LR 41.1 and they should be
10 dismissed from this case without a court order effective on March 16, 2017.
11

12
13 As the Ninth Circuit stated in *Pedrina v. Chun*, 987 F.2d 608, 610 (9th Cir.
14 1993):
15

16
17 The language of Rule 41(a)(1) is unequivocal. It permits a plaintiff
18 to dismiss an action 'without order of court.' Fed. R. Civ. P. 41(a)(1).
19 As the Court stated in *American Cyanamid Co. v. McGhee*, 317 F.2d
20 295, 297 (5th Cir. 1963):

21 Th[e] [filing of notice] itself closes the file. There is
22 nothing the defendant can do to fan the ashes of that
23 action into life and the court has no role to play. This is
24 a matter of right running to the plaintiff and may not be
25 extinguished or circumscribed by adversary or court.
26 There is not even a perfunctory order of court closing
27 the file. Its alpha and omega was the doing of the
28 plaintiff alone. He suffers no impairment beyond his fee
29 for filing.

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2 Other Ninth Circuit cases support such a holding as well. *E.g., Ethridge v.*
3 *Harbor House Restaurant*, 861 F.2d 1389 (9th Cir. 1988) and *Hells Canyon Pres.*
4 *Council v. United States Forest Serv.*, 403 F.3d 683 (9th Cir. 2005) (citing
5 *Pedrina* and *Ethridge*.)
6
7

8 III. CONCLUSION

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10 In sum, despite their efforts, there is no law, case, or fact to support
11 Defendants' opposition pursuant to Rule 41 or LR 41.1. Based on the authorities
12 cited herein, former plaintiffs Joseph A. Mayo, IV and Pacific Coast Fiber Fuels,
13 LLC respectfully request that the Court deny Defendants' opposition to Mr.
14 Mayo's and Pacific Coast Fiber Fuels, LLC's "F.R.C.P. 41 Motion for Voluntary
15 Dismissal of Actions by Pacific Coast Fiber Fuels, LLC and Joseph A. Mayo IV"
16 as moot.
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21 DATED this 10th day of August, 2017.

22
23 DAVID J. GROESBECK, P.S.

24
25
26 /s/ David J. Groesbeck
27 David J. Groesbeck, WSBA No. 24749
28 David J. Groesbeck, P.S.

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5 david@groesbecklaw.com

6 Attorney for PACIFIC COAST FIBER
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1 I HEREBY CERTIFY that on the 10th day of August, 2017, I
2 electronically filed the foregoing with the Clerk of Court using CM/ECF System
3 which will send notification of such filing to the following:

4 Thomas W. McLane
5 Randall & Danskin
6

twm@randalldanskin.com

7 Alexandria T. Drake
8 Dunn & Black
9

adrake@dunnandblack.com

10 Julian Dayal
11 Akerman, LLP

julian.dayal@akerman.com

12 Kasey F. Dunlap
13 Akerman, LLP

kasey.dunlap@akerman.com

14 Richard T. Wetmore
15 Dunn & Black
16

rwetmore@dunnandblack.com

17 Robert A. Dunn
18 Dunn & Black

bdunn@dunnandblack.com

19 Scott A. Meyers
20 Akerman, LLP

scott.meyers@akerman.com

21 James B. King
22 Evans Craven & Lackie
23
24

jking@ecl-law.com

25 /s/ David J. Groesbeck
26 David J. Groesbeck, WSBA No. 24749
27
28

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